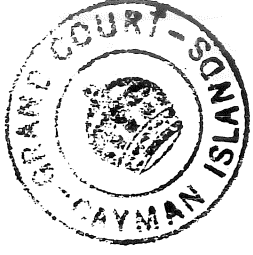


IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

SCA #186/92



ANA QUINDIN ORTIZ V. REGINA

JUDGMENT

Mr. McField for appellant
Mr. Bulgin for Crown

SCHOFIELD J.

Ana Guindin Ortiz ("the appellant") appeals against her conviction in the Summary Court on charges of possession of ganja with intent to supply, and being concerned in the possession of ganja with intent to supply, both contrary to section 3 (1)(n) of the Misuse of Drugs Law.

Basically the prosecution evidence is not in dispute. The appellant came to the Island from New York with her younger friend, who she regards as her niece, on the 19th October, 1992. They stayed at the Sleep Inn on West Bay Road in the same room and were in each others company throughout except perhaps for periods of a few minutes when the friend, a Miss Zayas, went to get a beer.

The two ladies were leaving the Island on Friday 23rd October, 1992, by the Cayman Airways flight to New York. Miss Zayas checked in for them and the appellant stayed in the back ground. She checked through two black Samsonite suitcases each with a distinctive yellow stripe on it. The ladies had other bags which they intended to carry on the aircraft as hand luggage. One of these bags had, according to the appellant been purchased on the Island by Miss Zayas and was meant to hold their dirty clothing.

Police officers checking the luggage in the departure section

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of the airport became suspicious because of a heavy smell of detergent emanating from the two suitcases. Miss Zayas, against whose name the luggage tickets were entered, was paged and was escorted to where the suitcases were located. She was asked if the suitcases were hers and she said they were but one was her aunt's. Miss Zayas was asked which suitcase was hers and she said they both looked the same but then pointed to one of them which had been tagged with a number 021198. When she was invited to open the cases Miss Zayas looked for the keys but could not find them. She said her aunt had them, so the appellant was paged and she was taken to the area by an officer of Cayman Airways who speaks Spanish the appellant's first language. The appellant was asked if the luggage was hers and she said one of them was hers and the other was Mrs. Zayas'. She identified as her the second suitcase, the one not identified by Ms. Zayas. When asked for the keys to the suitcases the appellant could not find them. A Customs Officer opened the suitcases with his own keys and distributed almost equally between the two suitcases was found a total of 99 lbs. of ganja. Ms. Zayas said to leave the appellant alone because she does not know anything about the stuff - it is hers.

The appellant was interviewed by Detective Constable Riverol. The contents of the interview is a summary of her testimony to Court. She said Mrs. Zayas paid for her trip to Cayman and the appellant brought only \$20 with her. They stayed at the Sleep Inn, in the same room and whenever Ms. Zayas went out so did the appellant, except for a few occasions when Ms. Zayas went out for three or four minutes. They brought the two black suitcases and three other items of luggage to Cayman. When they arrived in Cayman Ms. Zayas bought another suitcase and said it was for the clothes they had brought from New York. They did not buy clothes in Cayman. Ms. Zayas checked the suitcases in at the airport when the appellant was asked if the suitcases were hers she pointed one out as hers because Ms. Zayas had told her one was hers.

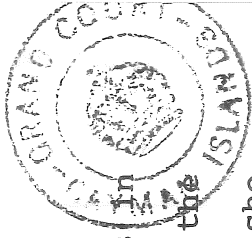
The appellant denied knowledge of the ganja. The issues in the case are straightforward. Did the prosecution prove that the appellant was in possession or control of the suitcase she identified as hers? If so did she displace by her evidence the presumption of possession of its contents which is applied by virtue of the provision of section 7 (1)(b) of the Misuse of Drugs Law?

Clearly the appellant identified the suitcase as her own. She brought the suitcase to the Island. She would need a suitcase to put her clothes in on her arrival and on her departure from the Island. That Ms. Zayas checked the luggage in through the check-in counter has little significance. It is not unusual for one of two travellers to undertake that task. And it must not be forgotten that the appellant is Spanish speaking so would be more likely to leave the checking-in to her fellow passenger. In all the circumstances the appellant's subsequent contention and that of Ms. Zayas, that the suitcases were Ms. Zayas' alone, did not have the ring of truth.

The suitcase was proved to be in the appellant's possession. Given the totality of evidence it is patently untrue that the appellant did not have knowledge of the suitcases' contents. She was not out of Ms. Zayas' sight for longer than four minutes. How could she share an hotel room without knowing of the contents of the two suitcases which the ladies brought to the Island with them? If they were taken elsewhere to be packed with ganja the appellant would know. If they were packed in the room she would know.

The prosecution clearly proved a joint enterprise by these two ladies to take the ganja off the Island and having regard to its quality they must have been in joint possession of the ganja with intent to supply it.

The appellant was also convicted of being concerned in the



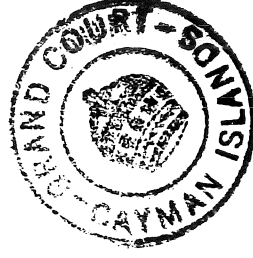
possession of the ganja with intent to supply, in relation to the same incident of possession of the same ganja. She was punished twice for the same action albeit that a concurrent prison sentence was imposed. I set aside the conviction for the offence of being concerned of possession of ganja with intent to supply and order that the offence be left on the file.

The sentence was one of two and a half years imprisonment. In itself this was not a manifestly excessive sentence. However Ms. Zayas who pleaded guilty; was regarded, quite rightly as the prime mover in the matter. She received a sentence of two years imprisonment, six months of which was suspended. The reason behind learned Magistrates decision was that Ms. Zayas is HIV positive. Taking that tragic circumstance together with her admission of her involvement led the Magistrate to adopt a lenient approach. Counsel has urged me that the justice of the case will be met by applying the same approach to the appellant. In my judgment, having regard to her lesser involvement that is a proper approach.

The appeal against conviction is dismissed. The conviction in 3755/92 is set aside and the charge is left on the file.

The sentence in 3698/92 is reduced from two and half years imprisonment to two years imprisonment with six months suspended.

Orders accordingly.



Judge

Dated this 22nd day of November, 1993